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Attorneys for Defendant
Select Portfolio Servicing, Inc.

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Michael B. Sparlin; and Sharon J. Sparlin
Plaintiff,

v.

Select Portfolio Servicing, Inc.,
Defendant.

CASE NO.: 4:11-cv-00240-CKJ

Michael B. Sparlin; and Sharon J. Sparlin
Plaintiff,

v.

Select Portfolio Servicing, Inc.,
Defendant.

CASE NO.: 4:11-cv-00241-CKJ

SELECT PORTFOLIO SERVICING, INC.'S MOTION TO CONSOLIDATE

Defendant Select Portfolio Servicing, Inc. ("SPS"), by and through its counsel, HOLLAND & HART LLP, hereby moves this Court for an order consolidating Case No. 4:11-cv-00240-CKJ with Case No. 4:11-cv-00241-CKJ and providing further relief as to all similar claims filed by Plaintiffs Michael B. Sparlin and Sharon J. Sparlin ("Plaintiffs") against SPS concerning these common factual and legal matters.

This Motion is made pursuant to Fed.R.Civ.P. 42 and LRCiv. 42.1(b) and is based upon the attached Memorandum of Points and Authorities and supporting documentation, the papers and pleadings on file in this action, and any oral argument this Court may allow.

DATED this 26th day of April, 2011

HOLLAND & HART LLP

/s/ Sean D. Thueson

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Select Portfolio Servicing, Inc.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

For the past approximately fourteen months, Plaintiff Michael Sparlin has refused to repay a mortgage he took out for an investment property in Kingman, Arizona. Accordingly, he and his wife have filed at least nine separate lawsuits against SPS, the servicer of the delinquent mortgage, each concerning SPS' alleged actions with respect to servicing the mortgage. Plaintiffs have also threatened to continue filing the same lawsuits, one a day, until SPS stops all attempts to have the mortgage repaid. This Motion, however, is not intended to reach the merits of Plaintiffs' claims – most of which cannot be maintained as a matter of law and the remainder of which are not factually supportable – but rather seeks relief from the vexatious nature of Plaintiffs' filings.

SPS has removed two of Plaintiffs' lawsuits which are now pending before this Court as Case No. 4:11-cv-00240-CKJ and Case No. 4:11-cv-00241-CKJ. SPS seeks consolidation of those two cases in order to save time, expense, and judicial resources.

SPS also seeks an order from this Court concerning Plaintiffs' other lawsuits

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1 against SPS. As detailed below, Plaintiffs have engaged in duplicative and improper
 2 claim splitting in an apparent attempt to force SPS defend these related claims across
 3 multiple lawsuits. Such an attempt is entirely inconsistent with clearly established
 4 judicial principals and can only be described as an attempt to harass and cause SPS
 5 unnecessary cost and delay, as well as waste judicial resources. Because this Court
 6 should not condone such conduct, SPS requests the Court order SPS be allowed to
 7 consolidate all such actions filed by Plaintiffs without further motion practice.

8 **II. STATEMENT OF RELEVANT FACTS**

9 **A. PIMA COUNTY SMALL CLAIMS CASE NO. CV11-510208-SC**

10 On or about March 28, 2011, Plaintiffs commenced an action in the Small Claims
 11 Division of the Pima County Consolidated Justice Court in the State of Arizona, entitled
 12 Michael B. Sparlin and Sharon J. Sparlin, Plaintiffs, vs. Select Portfolio Servicing, Inc.,
 13 Defendant, as Case No. CV11-510208-SC (“Small Claims Case No. 1”). A true and
 14 correct copy of the Complaint in Small Claims Case No. 1 is attached hereto as Exhibit A.
 15 Plaintiffs are the only named plaintiffs in Small Claims Case No. 1, and SPS is the only
 16 named defendant in Small Claims Case No. 1. *See id.*

17 Plaintiffs’ claims against SPS in Small Claims Case No. 1 purportedly arise under
 18 15 U.S.C. § 1692g(b) and “Arizona Debt Collection and Consumer Protection Statute
 19 R20-4-152.” *See id.* On April 21, 2011, SPS removed Small Claims Case No. 1 to this
 20 Court, which has been assigned the case number 4:11-cv-00240-CKJ.

21 **B. PIMA COUNTY SMALL CLAIMS CASE NO. CV11-510211-SC**

22 On or about March 29, 2011, Plaintiffs commenced an action in the Small Claims
 23 Division of the Pima County Consolidated Justice Court in the State of Arizona, entitled
 24 Michael B. Sparlin and Sharon J. Sparlin, Plaintiffs, vs. Select Portfolio Servicing, Inc.,
 25 Defendant, as Case No. CV11-510211-SC (“Small Claims Case No. 2”). A true and
 26 correct copy of the Complaint in Small Claims Case No. 2 is attached hereto as Exhibit B.
 27 Plaintiffs are the only named plaintiffs in Small Claims Case No. 2, and SPS is the only
 28 named defendant in Small Claims Case No. 2. *See id.*

1 Plaintiffs' claims against SPS in Small Claims Case No. 2 purportedly arise under
 2 15 U.S.C. § 1692c(a)(1) and "ADCCPA R20-4-1514(A)." *See id.* On April 21, 2011,
 3 SPS removed Small Claims Case No. 2 to this Court, which has been assigned the case
 4 number 4:11-cv-00241-CKJ.

5 **C. PIMA COUNTY SMALL CLAIMS CASE NO. CV11-510231-SC**

6 On or about April 6, 2011, Plaintiffs commenced an action in the Small Claims
 7 Division of the Pima County Consolidated Justice Court in the State of Arizona, entitled
 8 Michael B. Sparlin and Sharon J. Sparlin, Plaintiffs, vs. Select Portfolio Servicing, Inc.,
 9 Defendant, as Case No. CV11-510231-SC ("Small Claims Case No. 3"). A true and
 10 correct copy of the Complaint in Small Claims Case No. 3 is attached hereto as Exhibit C.
 11 Plaintiffs are the only named plaintiffs in Small Claims Case No. 3, and SPS is the only
 12 named defendant in Small Claims Case No. 3. *See id.*

13 Plaintiffs' claims against SPS in Small Claims Case No. 3 purportedly arise under
 14 15 U.S.C. § 1681s-2(a)(3) and the Section 806(6) of the Fair Debt Collection Practices
 15 Act 15 U.S.C. § 1692, *et seq.* ("FDCPA"). *See id.* As such, this Court has original
 16 jurisdiction over Small Claims Case No. 3 under 28 U.S.C. § 1331, and that action may
 17 be removed to this Court pursuant to the provisions of 28 U.S.C. § 1441. The deadline
 18 for SPS to remove Small Claims Case No. 3 to this Court is May 9, 2011, which date is
 19 thirty days after SPS' receipt of the Complaint in Small Claims Case No. 3. *See* 28
 20 U.S.C. § 1446(b).

21 As the answer for this matter is due April 28, 2011, SPS is concurrently removing
 22 this action to this Court and will advise the Court concerning the case number assigned
 23 once received.

24 **D. PIMA COUNTY SMALL CLAIMS CASE NO. CV11-510232-SC**

25 On or about April 7, 2011, Plaintiffs commenced an action in the Small Claims
 26 Division of the Pima County Consolidated Justice Court in the State of Arizona, entitled
 27 Michael B. Sparlin and Sharon J. Sparlin, Plaintiffs, vs. Select Portfolio Servicing, Inc.,
 28 Defendant, as Case No. CV11-510232-SC ("Small Claims Case No. 4"). A true and

1 correct copy of the Complaint in Small Claims Case No. 4 is attached hereto as Exhibit D.
2 Plaintiffs are the only named plaintiffs in Small Claims Case No. 4, and SPS is the only
3 named defendant in Small Claims Case No. 4. *See id.*

4 Plaintiffs' claims against SPS in Small Claims Case No. 4 purportedly arise under
5 15 U.S.C. § 1681s-2(b)(B). *See id.* As such, this Court has original jurisdiction over
6 Small Claims Case No. 4 under 28 U.S.C. § 1331, and that action may be removed to this
7 Court pursuant to the provisions of 28 U.S.C. § 1441. The deadline for SPS to remove
8 Small Claims Case No. 4 to this Court is May 9, 2011, which date is thirty days after
9 SPS' receipt of the Complaint in Small Claims Case No. 4. *See* 28 U.S.C. § 1446(b).

10 As the answer for this matter is due April 29, 2011, SPS is concurrently removing
11 this action to this Court and will advise the Court concerning the case number assigned
12 once received.

13 **E. PIMA COUNTY SMALL CLAIMS CASE NO. CV11-510237-SC**

14 On or about April 8, 2011, Plaintiffs commenced an action in the Small Claims
15 Division of the Pima County Consolidated Justice Court in the State of Arizona, entitled
16 Michael B. Sparlin and Sharon J. Sparlin, Plaintiffs, vs. Select Portfolio Servicing, Inc.,
17 Defendant, as Case No. CV11-510237-SC ("Small Claims Case No. 5"). A true and
18 correct copy of the Complaint in Small Claims Case No. 5 is attached hereto as Exhibit E.
19 Plaintiffs are the only named plaintiffs in Small Claims Case No. 5, and SPS is the only
20 named defendant in Small Claims Case No. 5. *See id.*

21 Plaintiffs' claims against SPS in Small Claims Case No. 5 purportedly arise under
22 15 U.S.C. § 1681s-2(b)(B) and 15 U.S.C. § 1692e(10). *See id.* As such, this Court has
23 original jurisdiction over Small Claims Case No. 5 under 28 U.S.C. § 1331, and that
24 action may be removed to this Court pursuant to the provisions of 28 U.S.C. § 1441. The
25 deadline for SPS to remove Small Claims Case No. 5 to this Court is May 12, 2011,
26 which date is thirty days after SPS' receipt of the Complaint in Small Claims Case No. 5.
27 *See* 28 U.S.C. § 1446(b).

28 The answer is due in this matter approximately May 3, 2011.

F. PIMA COUNTY SMALL CLAIMS CASE NO. CV11-510239-SC

On or about April 10, 2011, Plaintiffs commenced an action in the Small Claims Division of the Pima County Consolidated Justice Court in the State of Arizona, entitled Michael B. Sparlin and Sharon J. Sparlin, Plaintiffs, vs. Select Portfolio Servicing, Inc., Defendant, as Case No. CV11-510239-SC ("Small Claims Case No. 6"). A true and correct copy of the Complaint in Small Claims Case No. 6 is attached hereto as Exhibit F. Plaintiffs are the only named plaintiffs in Small Claims Case No. 6, and SPS is the only named defendant in Small Claims Case No. 6. *See id.*

Plaintiffs' claims against SPS in Small Claims Case No. 6 purportedly arise under Section 809(b) of the FDCPA. *See id.* As such, this Court has original jurisdiction over Small Claims Case No. 6 under 28 U.S.C. § 1331, and that action may be removed to this Court pursuant to the provisions of 28 U.S.C. § 1441. The deadline for SPS to remove Small Claims Case No. 6 to this Court is May 13, 2011, which date is thirty days after SPS' receipt of the Complaint in Small Claims Case No. 6. *See* 28 U.S.C. § 1446(b).

The answer is due in this matter approximately May 3, 2011.

G. PIMA COUNTY SMALL CLAIMS CASE NO. CV11-510240-SC

On or about April 11, 2011, Plaintiffs commenced an action in the Small Claims Division of the Pima County Consolidated Justice Court in the State of Arizona, entitled Michael B. Sparlin and Sharon J. Sparlin, Plaintiffs, vs. Select Portfolio Servicing, Inc., Defendant, as Case No. CV11-510240-SC ("Small Claims Case No. 7"). A true and correct copy of the Complaint in Small Claims Case No. 7 is attached hereto as Exhibit G. Plaintiffs are the only named plaintiffs in Small Claims Case No. 7, and SPS is the only named defendant in Small Claims Case No. 7. *See id.*

Plaintiffs' claims against SPS in Small Claims Case No. 7 purportedly arise under Section 809(b) of the FDCPA. *See id.* As such, this Court has original jurisdiction over Small Claims Case No. 7 under 28 U.S.C. § 1331, and that action may be removed to this Court pursuant to the provisions of 28 U.S.C. § 1441. The deadline for SPS to remove Small Claims Case No. 7 to this Court is May 13, 2011, which date is thirty days after

1 SPS' receipt of the Complaint in Small Claims Case No. 7. *See* 28 U.S.C. § 1446(b).

2 The answer is due in this matter approximately May 3, 2011.

3 **H. PIMA COUNTY SMALL CLAIMS CASE NO. CV11-510243-SC**

4 On or about April 12, 2011, Plaintiffs commenced an action in the Small Claims
5 Division of the Pima County Consolidated Justice Court in the State of Arizona, entitled
6 Michael B. Sparlin and Sharon J. Sparlin, Plaintiffs, vs. Select Portfolio Servicing, Inc.,
7 Defendant, as Case No. CV11-510243-SC ("Small Claims Case No. 8"). A true and
8 correct copy of the Complaint in Small Claims Case No. 8 is attached hereto as Exhibit H.
9 Plaintiffs are the only named plaintiffs in Small Claims Case No. 8, and SPS is the only
10 named defendant in Small Claims Case No. 8. *See id.*

11 Plaintiffs' claims against SPS in Small Claims Case No. 8 purportedly arise under
12 Section 809(b) of the FDCPA. *See id.* As such, this Court has original jurisdiction over
13 Small Claims Case No. 8 under 28 U.S.C. § 1331, and that action may be removed to this
14 Court pursuant to the provisions of 28 U.S.C. § 1441. The deadline for SPS to remove
15 Small Claims Case No. 8 to this Court is May 16, 2011, which date is the first judicial
16 day following thirty days after SPS' receipt of the Complaint in Small Claims Case No. 8.
17 *See* 28 U.S.C. § 1446(b).

18 The answer is due in this matter approximately May 4, 2011.

19 **I. PIMA COUNTY SMALL CLAIMS CASE NO. CV11-510246-SC**

20 On or about April 13, 2011, Plaintiffs commenced an action in the Small Claims
21 Division of the Pima County Consolidated Justice Court in the State of Arizona, entitled
22 Michael B. Sparlin and Sharon J. Sparlin, Plaintiffs, vs. Select Portfolio Servicing, Inc.,
23 Defendant, as Case No. CV11-510246-SC ("Small Claims Case No. 9"). A true and
24 correct copy of the Complaint in Small Claims Case No. 9 is attached hereto as Exhibit I.
25 Plaintiffs are the only named plaintiffs in Small Claims Case No. 9, and SPS is the only
26 named defendant in Small Claims Case No. 9. *See id.*

27 Plaintiffs' claims against SPS in Small Claims Case No. 9 purportedly arise under
28 Section 809(b) of the FDCPA. *See id.* As such, this Court has original jurisdiction over

Small Claims Case No. 9 under 28 U.S.C. § 1331, and that action may be removed to this Court pursuant to the provisions of 28 U.S.C. § 1441. The deadline for SPS to remove Small Claims Case No. 9 to this Court is May 16, 2011, which date is the first judicial day following thirty days after SPS' receipt of the Complaint in Small Claims Case No. 9. *See* 28 U.S.C. § 1446(b).

The answer is due in this matter approximately May 5, 2011.

J. PLAINTIFFS' OTHER THREATENED SUITS AGAINST SPS

A true and correct copy of a letter dated April 2, 2011, SPS received from Plaintiffs is attached hereto as Exhibit J. In that letter, Plaintiffs advised SPS as follows:

on Monday, March 28, 2011 I filed the first of several lawsuits against Select Portfolio Servicing, Inc. To date I have filed six (6) separate lawsuits¹ and will continue to file each day until I cover all [21] counts as outlined in my letter of March 25, 2011 [sic].

Id. (emphasis added). Indeed, Plaintiffs have threatened to file an additional lawsuit against SPS for each and every monthly mortgage statement SPS may send to them. *Id.*

III. ARGUMENT

A. CONSOLIDATION IS WARRANTED

In the interest of time, economy, and convenience, this Court may consolidate separately-filed actions. Specifically, Fed.R.Civ.P. 42(a) provides:

If actions before the court involve a common question of law or fact, the court may: (1) join for hearing or trial any and all matters at issue in the action; (2) consolidate the actions; or (3) issue any other orders to avoid unnecessary cost or delay.

Id. This rule “provides judges with a powerful tool to expedite litigation by drawing together separate actions sharing common legal or factual questions.” 8 James Wm. Moore et al., *Moore's Federal Practice* ¶ 42.10[1][a] (3d ed. 2004). Indeed, the objective of consolidation is to “administer the court's business with expedition and economy while

¹ Plaintiffs' letter represents they had filed six lawsuits against SPS as of April 2, 2011. However, of the nine lawsuits Plaintiffs have filed against SPS set forth above, only two had been filed as of April 2, 2011. *See* Exhibits A and B; *cf.* Exhibits C through I. To the extent Plaintiffs have filed lawsuits against SPS other than those outlined above, SPS has not been served with the same nor is it aware of the contents thereof.

1 providing justice to the parties.” *Advey v. The Celotex Corp.*, 962 F.2d 1177, 1180 (6th
2 Cir. 1992) (*citing* Wright & Miller, *Federal Practice and Procedure* § 2381) (internal
3 quotation marks omitted). This Court is vested with “broad discretion” in determining
4 whether to consolidate existing cases. *Gillette Motor Transport, Inc. v. N. Oklahoma*
5 *Butane Co.*, 179 F.2d 711, 712 (10th Cir. 1950); *see also Investors Research Co. v. U.S.*
6 *Dist. Ct.*, 877 F.2d 777 (9th Cir. 1989) (noting that the decision to consolidate is not
7 dependant on the approval of the affected parties). Consolidation is appropriate when
8 there are common legal issues or common underlying facts involving multiple actions,
9 even if there are discrete facts or legal issues pertinent to individual claims. *Gillette*, 179
10 F.2d at 712.

11 Consolidation here is appropriate (and beneficial) because all of Plaintiffs’ claims
12 relate to the same common set of facts and common issues of law. Indeed, as detailed
13 above, each of Plaintiffs’ nine lawsuits assert various alleged violations of the FDCPA or
14 the Fair Credit Reporting Act, 15 U.S.C. § 1681, *et seq.*, all relating to SPS’ role as the
15 servicer of Plaintiffs’ mortgage. Ultimately, SPS intends to move to dismiss Plaintiffs’
16 claims under the FDCPA for failure to state a claim upon which relief can be granted
17 because it does not fall within the definition of “debt collector” thereunder. *See Mansour*
18 *v. Cal-Western*, 618 F.Supp.2d 1178, 1182 (D.Ariz. 2009) (“mortgagees and their
19 assignees, servicing companies, and trustee fiduciaries are not included in the definition
20 of ‘debtor collector’ [under the FDCPA].”). Judicial economy, however, dictates that
21 SPS should not be forced to file such a motion nine times to be considered by, potentially,
22 this and seven different Courts. Consolidation of these matters will save time, expenses,
23 and judicial resources, and will prevent the potential for inconsistent adjudication.
24 Conversely, there is no risk of prejudice or confusion to the parties if consolidation is
25 granted. As such, there is simply no basis not to consolidate these claims which could
26 and should have been brought in a single action in the first place.

27 ///

28 ///

B. PLAINTIFFS SHOULD BE REQUIRED TO REMEDY THEIR IMPROPER CLAIM SPLITTING

“The rule against splitting a cause of action generally requires that all claims between the same parties arising out of or relating to the same transactional circumstances or core set of facts, or arising from a single wrong, or involving the same subject matter be joined in a single action.” *Meritage Homes Corp. v. Hancock*, 522 F.Supp.2d 1203, 1214 (D.Ariz. 2007) (internal quotation and citation omitted). “The rationale behind the rule is to ‘prevent a multiplicity of suits ... [and] to avoid harassment of the defendant, vexatious litigation, and the costs incident to successive suits on the same cause of action.’” *Agles v. Merck & Co., Inc.*, 875 F.Supp. 701, 707 (D.Hawai‘i 1995) (citation omitted). Thus, “courts faced with duplicative suits may stay the second suit, dismiss it without prejudice, enjoin the parties from proceeding with it, or consolidate the two actions.” *Sensormatic Sec. Corp. v. Sensormatic Electronics Corp.*, 452 F.Supp.2d 621, 626 n.2 (D.Md. 2006).

Plaintiffs have already filed at least nine lawsuits against SPS arising out of the same core set of facts. As set forth above, SPS has every right to remove those lawsuits to this Court and intends to exercise that right. However, with each removal SPS is required to incur cost, expense, and delay that frankly should not be incurred. For example, SPS will be required to prepare and file nine separate petitions for removal with this Court (filing copies of each of them in the state court as well), prepare and file nine separate sets of the documents associated with removal (Civil Case Cover Sheets, Supplemental Civil Case Cover Sheets, Certificates of Interested Parties, Corporate Disclosure Statements, etc.), pay the filing fees associated with removal nine times, and presumably be required to file additional motions similar to this Motion to then consolidate those removed actions. Moreover, Plaintiffs’ tactics will result in substantial waste of this Court’s resources and the resources of the courts in which Plaintiffs originally file these actions. Even if Plaintiffs’ allegations were valid, which they are not, Plaintiffs’ abuses of the judicial process and resulting burden improperly imposed upon

1 this Court and SPS cannot be tolerated. As such, SPS requests the Court grant one or
2 more of the following potential remedies, or some other remedy as the Court deems just
3 and proper:

- 4 • Once removed by SPS, order each and every lawsuit filed by Plaintiffs
5 concerning these matters filed against SPS pending in any Court other than this
6 Court be immediately consolidated without further motion;
- 7 • Waive the filing fees associated with removing the remaining actions Plaintiffs
8 have filed against SPS, including any additional actions Plaintiffs have filed of
9 which SPS is not currently aware, and any actions Plaintiffs may file against
10 SPS concerning these matters in the future;
- 11 • Require Plaintiffs seek leave of this Court before they can file any new actions
12 other than the actions already filed that relate to the same mortgage, i.e. the
13 same set of facts and circumstances;
- 14 • Assess sanctions against Plaintiffs, and payable to SPS, in an amount equal to
15 the additional expense SPS incurs in removing and consolidating the remaining
16 actions Plaintiffs have filed against SPS, including any additional actions
17 Plaintiffs have filed of which SPS is not currently aware and any actions
18 Plaintiffs may file against SPS concerning these matters in the future.

19 As noted above, SPS' deadline to answer the additional matters mentioned above
20 is rapidly approaching. Accordingly, SPS requests the Court issue its order concerning
21 this Motion and the relief requested herein before that date so SPS can avoid the
22 additional and unnecessary expenses caused by Plaintiffs' vexatious litigation tactics.

23 **IV. CONCLUSION AND RELIEF REQUESTED**

24 For all of the foregoing reasons, SPS respectfully requests the Court consolidate
25 Case No. 4:11-cv-00240-CKJ with Case No. 4:11-cv-00241-CKJ for all purposes. SPS
26 further requests the Court order all other actions pending in other courts be immediately
27 consolidated once removed by SPS without further motion, and that the fees for removing
28 those actions be waived. Moreover, SPS requests the Court grant the request to remedy

1 Plaintiffs' duplicative and improper claim splitting concerning other related lawsuits in a
2 manner the Court deems just and proper.

3 DATED this 26th day of April, 2011

4 HOLLAND & HART LLP

5
6 /s/ Sean D. Thueson

7 Cory A. Talbot

8 Arizona Bar No. 20702

9 Sean D. Thueson (*Pro Hac Vice Pending*)

10 Nevada Bar No. 8690

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16 *Select Portfolio Servicing, Inc.*

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CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5(b), I hereby certify that on the 26th day of April, 2011, I served a true and correct copy of the foregoing **SELECT PORTFOLIO SERVICING, INC.'S MOTION TO CONSOLIDATE** by electronic transmission to the parties on electronic file and/or depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below :

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Plaintiff/Pro Se

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